PSYCHIATRIC EVALUATIONS OF ASYLUM SEEKERS: Is it Ethical Practice or Advocacy?

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Each year, thousands of people seek asylum in the United States and assert, as the basis of their application, that they have suffered ill treatment or torture from government officials in their countries of origin. Their hope and claim of eligibility for asylum is based on the Refugee Act of 1980. According to the Refugee Act of 1980, a person within (or without) the US may be granted asylum if he or she can demonstrate a "well-founded fear of persecution" based on political opinion, religion, race, nationality, or membership in a particular social group. As such, individuals who claim to be victims of government-sponsored persecution or abuse would seem compelling candidates for protected status within the US.

As a result, many of these individuals undergo medical and/or psychiatric evaluations during their asylum-seeking procedures. The primary purpose of many such evaluations—and indeed the goal of the organizations who assist in providing these services—is to help advance the candidate's claims by providing "critical medical/psychiatric documentation" of exposure to torture and ill treatment. The medical or psychiatric report is expected to serve as "expert opinion" about the degree to which medical or psychiatric findings correlate with the applicant's allegation of abuse and to effectively communicate the medical opinion to the judiciary or other appropriate authorities. Clearly, as is true of many forensic settings, there is significant incentive for secondary gain (i.e., legal status in the US) on the part of asylum applicants. Specifically, this raises the likelihood that among the asylum applicants who have genuine exposure to psychological abuse and or torture, there will exist a significant number of individuals who are exaggerating or fabricating their symptoms.

Indeed, a black market exists for asylum seekers who wish to purchase "stories of abuse or persecution" proffered to be sufficiently compelling to US authorities as to ensure success in obtaining legal asylum. That such a market should exist is not surprising given that, for many individuals, the primary evidence in support of their candidacy for asylum is A) US Department of State or media evidence that abusive practices by the

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candidate's home government have been documented to occur; and/or B) the candidate's personal story of being a victim of abuse or torture.

Unlike the information obtained during a medical examination, which might provide unambiguous physical evidence for a specific abusive practice (such as genital mutilation), the information obtained during a psychiatric evaluation will be primarily the subjective account of the reported traumatic event and the psychiatric sequellae of the event. If the purpose of the medical evaluation was to assist in clinical treatment and management of a psychiatric condition, independent of the claims process, this reliance on subjective data would not be any more problematic than it is in current practice.

However, given that many evaluations have the goal of providing expert opinion about the degree to which medical or psychiatric findings correlate with the applicant's allegation of abuse, a number of problems arise.

In the absence of any external, objective data by which one might verify that the individual being examined was indeed exposed to the reported traumatic event, the clinician is left to either accept the trauma exposure as a given or use the reported symptoms as evidence for the idea that the person was genuinely exposed to a traumatic event.

Two scientific facts should give any clinician performing such evaluations pause: First, there is no scientifically established method for establishing the veracity of a reported traumatic event that would meet Daubert criteria as set out by the federal courts. Although significant scientific advances have been made in the science of statement validity assessment with regard to claims of sexual abuse made by the children of parents involved in custody disputes, no current method has been established by which one might assess the validity of a story provided by an asylum candidate. Second, at present all of the symptoms of posttraumatic stress disorder (PTSD) are subjective report-based; there are no current objective measures of PTSD. Thus, the clinician who accepts the story provided at face value and who assumes that the symptoms reported by the applicant are 'evidence' of the exposure to a traumatic event is engaged in a dubious process.

There is a significant danger that the reasoning of the clinician will follow the same pattern exhibited by well-meaning psychiatrists involved in claims of recovered memory, which received so much attention in the 1990s. Clinicians at that time used clinical symptoms (nightmares, anxiety, intrusive thoughts, emotional numbing, lack of memory, etc.) as "signs" or evidence of abuse. Although many stated (as will advocates of this process for asylum seekers) that the evidence was 'consistent' with a history of abuse, this was ultimately a distinction without a difference: Mental health professionals offered expert testimony to the courts about trauma for which there was no objective evidence. This type of reasoning was both unwise and professionally unsound in the 1990s, and it is unwise and unsound at the present time. "*Post-hoc ergo propter-hoc*" reasoning (after the fact, therefore caused by) is not a sound basis on which our professional standards should rest. At present, it is likely there is a legitimate reason, distinct and separate from the process of advocacy, for a psychiatrist to perform evaluations of asylum applicants. It is this: To provide clinical assessments and treatment for an individual whose psychiatric symptoms may be interfering with his or her ability to work with his or her attorney during the process of seeking asylum. This is within our scope of training and expertise; extending beyond evidence-based uses of our clinical skills to achieve a legal goal is advocacy, not ethical practice, and it will undermine the credibility of our profession. ●

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